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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,346	02/14/2002	Raymond Zappe	0144	2491

7590 07/11/2003
H. GORDON SHIELDS
7830 NORTH 23RD AVENUE
PHOENIX, AZ 85021

EXAMINER

GUTMAN, HILARY L

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 07/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,346

Applicant(s)

ZAPPE, RAYMOND

Examiner

Hilary Gutman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 21-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. In view of the arguments filed on 5/22/2003, PROSECUTION IS HEREBY REOPENED. A new rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the clear fourth layer of claim 27 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The use of the trademark mylar (page 10) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

1. The abstract of the disclosure is objected to because at [0053], line 7, "are disclosed" is inappropriate. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 25-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 25, line 1, "relatively flexible" is recited which is unclear in the context of the specification. Specifically, it is unclear what the applicant means by this phrase and to what degree of flexibility the liner exhibits.

In claim 26, line 1, "relatively inflexible" is vague, indefinite, and unclear as to what features of the invention the applicant intends to recite. Specifically, the specification is unclear as to the degree of flexibility (or inflexibility) of the liner and only broadly states that "a relatively inflexible bedliner may be advantageous and in other cases a relatively flexible bedliner may be advantageous". This is not sufficient to support the claim language since the degrees of flexibility are not defined.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 21-22 and 25-26, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Kamiya et al.

Kamiya et al. disclose an article for a vehicle comprising in combination: a first base layer; a patterned second layer secured to the first base layer; and a clear third layer 10 secured to the patterned layer for permitting the patterned layer to be viewed.

The base layer can apparently be an elastic resin sheet such as polyurethane resin and is therefore considered a foam layer.

The article exhibits excellent elasticity and can be flexed; therefore the article is relatively flexible.

With regard to the "bedliner" recitation in the preamble of the claim, this language is not believed to limit the claim. Specifically, the claim preamble has the import that the claim as a whole suggests for it. In this case, the body of the claim makes no mention to any specific features that a bedliner would possess (such as a lip or wheel well cover) and the preamble merely states the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations. Therefore, the preamble is not considered a limitation and is of no significance to claim construction. See *Kropa v. Robie*, 187 F.2d at 152, 88 USPQ2d at 480-81 and MPEP 2111.02).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamiya et al. as applied to claim 21 above and further in view of Okada et al.

Kamiya et al. do not disclose the patterned layer being monochromatic or polychromatic.

Okada et al. teach a screen printing method for carrying out not only a monochromatic printing but also a polychromatic or multi-color printing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have allowed the patterned layer of Kamiya et al. to be monochromatic or polychromatic as taught by Okada et al. in order to provide a variety of designs for the article.

8. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kamiya et al. as applied to claim 21 above and further in view of Sada et al.

Kamiya et al. lack a clear fourth layer on the clear third layer.

Sada et al. teach a coating structure for vehicles with a plurality of clear coating layers, numbered 22, 22', which may be placed one upon another to obtain further improved brilliancy of the structure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied an additional clear layer as taught by Sada et al. upon the clear third layer of Kamiya et al. in order to improved the brilliancy of the article.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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10. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

or faxed to:

(703) 305-3597, (for formal communications intended for entry)

or:

(703) 308-3297, (for informal or draft communications, please clearly label

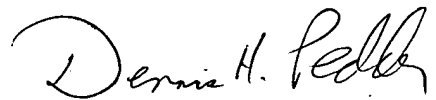
"PROPOSED" or "DRAFT").

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496. The examiner can normally be reached on M-F 7:30am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-3297 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

hlg
July 8, 2003


DENNIS H. PEDDER
PRIMARY EXAMINER
7/9/03 av 3612